

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**ELWOOD H. JONES**

Petitioner, Case No. 01-CV-564

v. JUDGE ROSE

**MARGARET A. BAGLEY, Warden**

MAGISTRATE JUDGE MERZ

Respondent.

---

**RESPONDENT'S OPPOSITION TO ELWOOD H. JONES'S MOTION TO AMEND  
PETITION (DKT. 15) ON GROUNDS OF EXHAUSTION**

---

Respondent opposes Jones's motion to amend his petition. In his motion (R. 142), Jones seeks to add a claim which he has not exhausted in the State courts. This Court may not grant a petition based on an unexhausted claim. 28 U.S.C. § 2254(b)(1)(A). Further, State corrective process is available to Jones to exhaust his claim in the State courts, i.e., in the form of a successive post-conviction petition or a motion for a new trial. 28 U.S.C. § 2254(b)(1)(B). Even though this Court may not *grant* a petition based on an unexhausted claim, it is welcome to *deny* a petition based on an unexhausted claim which lacks merit. 28 U.S.C. § 2254(b)(2). While Respondent does not waive the exhaustion requirement, she submits that this Court may deny Jones's petition notwithstanding the unexhausted claim which Jones seeks to add to his petition. *See Motion (R. 142).*

For the above reasons, Respondent respectfully requests that this Court deny Jones's motion to amend his petition.

Respectfully submitted,

MARC DANN  
Ohio Attorney General

s/Sarah A. Hadacek

**SARAH A. HADACEK\* (0080621)**

*\*Lead and Trial Counsel*  
Assistant Attorney General  
**STEPHEN E. MAHER (0032279)**  
Assistant Attorney General  
Capital Crimes Unit  
30 East Broad Street, 23rd Floor  
Columbus, Ohio 43215  
(614) 728-7055; Fax (614) 728-8600  
Emails: shadacek@ag.state.oh.us  
smaher@ag.state.oh.us

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *Respondent's Opposition to Elwood H. Jones's Motion to Amend Petition (Dkt. 15) on Grounds of Exhaustion* was delivered via the court's electronic filing system this 14th day of November 2007 to counsel for petitioner.

David Bodiker, Esq.  
Ohio Public Defender's Office  
8 East Long Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-5394  
Email: bodiker@opd.state.oh.us

Michael L. Monta, Esq.  
Monta & Monta  
3625 Old Salem Road  
Dayton, Ohio 45415  
(937) 890-6921  
Email: Zbeard7@aol.com

Gary W. Crim, Esq.  
943 Manhattan Avenue  
Dayton, Ohio 45406-5141  
(937) 276-5770  
Email: gwcrim@ameritech.net

s/Sarah A. Hadacek

**SARAH A. HADACEK (0080621)**